

CHAPTER 4

SELECTED SPECIAL FACTORS AND OTHER STATES

BACKGROUND

In this chapter, the following selected factors in child support guidelines are discussed:

- Adjustments for low-income obligors;
- Additional dependents (children from prior or subsequent relationships); and
- Use of net income over gross income.

Each discussion includes (1) an overview of California's current approach; (2) recent case law, if relevant; (3) a discussion of how other states address the factor; and (4) some of the specific challenges.¹⁶ This chapter concludes with a discussion of some of the more common issues faced today in the quadrennial reviews of states' child support guidelines.¹⁷

TREATMENT OF LOW-INCOME OBLIGORS

Issues relating to low-income nonresidential parents, including child support guidelines, have recently received more federal and state attention. In this section, the topic is first introduced by reviewing some of the recent research on low-income obligors, particularly the child support enforcement policy factors that affect how much is owed by low-income obligors. Next, the factors that are addressed in the California child support guideline are identified. If they are addressed, how they are addressed is described and any recent case law that is applicable to the issue is discussed. Specific comparisons of the treatment of low-income obligors in state child support guidelines follow the review.

¹⁶ Many of the challenges are drawn from what PSI has learned through consulting other states on child support guidelines or from the questions PSI receives after presentations that staff have given on guidelines throughout the country and from personnel who contact PSI directly because of PSI's international reputation as a leader in child support research. PSI has consulted over 40 states with child support guidelines in the past 15 years.

¹⁷ States that are conducting or have conducted their quadrennial guidelines review in the last few years include Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Iowa, Kentucky, Maine, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, South Dakota, Vermont, and others.

Recent Research on Low-Income Obligor

Recent research based on national data reveals that almost one-fourth of nonresident fathers are impoverished.¹⁸ As a consequence, poor fathers do not have the ability to pay child support—or, as their advocates put it, “They are dead-broke, not dead-beat.” Additional research corroborates this finding from another angle. Specifically, it finds that 16–32 percent of young nonresidential fathers not paying support are impoverished.¹⁹ Comparable figures for California are unavailable, but a current study in progress could possibly lead to some California-specific research relating child support arrears to obligor income. This California Department of Child Support Services study is identifying the current amount of uncollected child support arrearages statewide and will estimate the amount that realistically can be collected.

Two reports analyzing child support establishment policies that affect low-income nonresident parents were recently released by the Federal Department of Health and Human Services Office of Inspector General (OIG).²⁰ Several factors were examined by the OIG in the establishment of orders that may contribute to order and arrears amounts that exceed a low-income nonresidential parent’s ability to pay. A comparison of state policies is found in its first report. In its second report, case data in 10 randomly selected states are analyzed. (California was not one of the states.) Another study for the state of Colorado on arrears accumulation identified additional establishment factors that may contribute to order and arrears amounts that exceed a low-income father’s ability to pay.²¹

The factors identified in these studies consist of the following.

- *Establishment of retroactive support.* Most states charge the nonresidential parents for prior child support that would have offset payment of public assistance had a child support order been in place when the children received public assistance. The Colorado study found that 15 percent of its total child support arrears accumulated from the establishment of retroactive support.

¹⁸ Elaine Sorensen and Chava Zibman, “A Look at Poor Dads Who Don’t Pay Child Support,” *Assessing the New Federalism*, Paper 00-07, Urban Institute, Washington, D.C. (October 2000).

¹⁹ Ronald B. Mincy and Elaine Sorensen, “Deadbeats and Turnip in Child Support Reform” (1998) 17 *Journal of Policy Analysis and Management* 875–899.

²⁰ Federal Department of Health and Human Services, Office of Inspector General, *The Establishment of Child Support Orders for Low Income Non-custodial Parents*, OEI-05-99-00390, Chicago Regional Office (July 2000) and Federal Department of Health and Human Services, Office of Inspector General, *State Policies Used to Establish Child Support Orders for Low Income Non-custodial Parents*, OEI-05-99-00391, Chicago Regional Office (July 2000).

²¹ Jessica Pearson, *A Presentation on New Approaches to Child Support Arrears*, Presentation to the National Center for Strategic Nonprofit Planning and Community Leadership Peer Learning College, Boston, Massachusetts (January 8, 2000), Center for Policy Research, Denver, Colorado.

- *Routine fees and interest.* The first OIG report found that most states charge ongoing fees for income withholding and over half of the states have the ability to assess interest.
- *Income imputation.* Income may be imputed to the obligor if
 - ✓ The obligor did not provide required income information;
 - ✓ The obligor is unemployed, underemployed, or voluntarily unemployed; or
 - ✓ A combination of these and other factors as determined by the state.

The majority (73 percent) of the 48 states that impute income to the obligor calculate income based on what would be earned from full-time employment at minimum wage. The OIG's case file review found that orders established with imputed income were four times more likely to have zero payments than those where income was not imputed (45 percent of the orders with imputed income had zero payments and 11 percent of the orders where income was not imputed had zero payments).

- *Minimum order amounts.* As discussed in greater detail later in this section, over half of the states' child support guidelines apply minimum order amounts if obligor income is below the state-specified threshold. (The income threshold is below the poverty level and full-time earnings at minimum wage in most of these states.) The OIG found that in 13 percent of the cases it reviewed orders were established at minimum order amounts (with a median amount of \$55 per month), and 20 percent of those cases had zero payments.
- *Incarceration of obligor.* Nationally, about a quarter of the poor fathers who do not pay child support are incarcerated.²² (It is unknown whether any research exists that publishes a California-specific percentage.) Although not addressed by the OIG, in the Colorado study it was estimated that if orders were modified downward to the Colorado child support guideline's minimum order amount (\$20 per month), its total child support arrears would have been reduced by 5 percent.
- *Default orders.* A default order may be entered if the obligor does not appear for the hearing. According to the second OIG report, default orders are the most frequent reason for imputing income (31.5 percent of the examined orders with imputed income were defaults). The Colorado study found that 10 percent of its total child support arrears are from administrative default orders.

²² Sorensen and Zibman.

Treatment of Low-Income Obligor in California Guideline and Case Law

The existing California child support guideline is silent on some of the factors concerning low-income obligors listed above, but addresses others. While the guideline, like guidelines in many states, is silent on retroactive support, Family Code sections 3653 and 4009 limit the retroactivity of the commencement of the support order. The guideline also is silent on the issue of determining the support obligation of incarcerated obligors. However, under California case law, it is an error to impute income to an incarcerated parent based on prior employment and the expectation of future (postincarceration) employment.²³ Imputed income has to be based on the current circumstances of an incarcerated parent.

Factors affecting low-income obligors that are addressed in the California child support guideline include:

- *Income imputation.* The California child support guideline allows the court, at its discretion, to consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interest of the children (Fam. Code, § 4058(b)).
- *Low-income adjustment.* If the obligor's net income is less than \$1,000 per month, the court is to rule on whether a low-income adjustment shall be made. The court exercises its discretion in making this determination, based on the facts of each case, the principles set forth in Family Code section 4053 (see Exhibit 4-1), as well as the impact of the potential adjustment on the net incomes of the obligor and obligee. If the court determines that a low-income adjustment should be given, "the child support amount . . . shall be reduced by an amount that is no greater than the amount calculated by multiplying the child support amount . . . by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000" (Fam. Code, § 4055(b)(7)). Under these circumstances, the court has discretion to adjust support at any level *up to* the maximum low-income adjustment.
- *Default orders.* In calculating the order amount, the amount of time the child is presumed to be with the obligor is 0 percent (Fam. Code, § 4055(b)(6)).

²³ *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123, 83 Cal.Rptr.2d 229.

Exhibit 4-1
Family Code section 4053.

In implementing the statewide uniform guideline, the courts shall adhere to the following principles:

- (a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.
- (b) Both parents are mutually responsible for the support of their children.
- (c) The guideline takes into account each parent's actual income and level of responsibility for the children.
- (d) Each parent should pay for the support of the children according to his or her ability.
- (e) The guideline seeks to place the interests of children as the state's top priority.
- (f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.
- (g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.
- (h) The financial needs of the children should be met through private financial resources as much as possible.
- (i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.
- (j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.
- (k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.
- (l) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

Although not addressed in the guideline, other California state codes permit the following.

- *Presumed income.* Presumed income is somewhat similar to imputed income. As discussed above, the California child support guideline allows income imputation, but the state welfare codes specifically address the situation when obligor income is unknown and the order is being established by a local child support agency (Welf. and Inst. Code, § 11475.1(c)). If the obligor's income or the obligor's income history is unknown to the local child support agency, income shall be presumed to be an amount that results in a court order equal to the minimum basic standard of adequate care (Fam. Code, § 17400(d)(2)). A schedule of support order amounts based on presumed income and respective presumed order amounts is published annually. For example, in fiscal year 1999–2000, for one child the presumed income is \$1,966 per month and the order amount is \$390 per month.
- *Interest on child support arrears.* Interest accrues at the rate of 10 percent per annum (Code of Civ. Proc., § 685.010–685.110). Furthermore, Family Code sections 4500–4508 permit a judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon.

Recent Case Law

In *City and County of San Francisco v. Miller* (1996) 49 CA4th 866, 56 CR2d 887, the obligor's monthly disposable income, after paying rent and child support, would have been \$14 for food and other expenses. Refusing to deprive the obligor of the "minimum amount of income necessary to support life," the court entered a zero child-support order. The Court of Appeal, First Appellate District, affirmed on appeal. The appellate court held that given the father's financial circumstances, the lower court had not abused its discretion in reducing the support order to \$0.

Treatment of Low-Income Obligor in Other States

The OIG report discusses minimum order amounts. Many states establish minimum orders for obligors without known income with the expectation that all parents, regardless of income, should make some financial contribution to their child. Clearly, California does not have a minimum order amount, as zero or no ability orders are routinely issued where a parent has no income (due to incarceration, unemployment, disability, etc.). As shown in Exhibit 4-2, 34 states specify a minimum order amount. The most common minimum order amount is \$50 per month. The lowest minimum order amount is \$1 per week (or \$4.33 per month), and the highest minimum order amount is \$100 per month. A few states specify a formula. Four states leave the minimum order amount at the discretion of the court. There are 12 states that do not address minimum order amounts, but in 5 of these states, discretion is implicit because their child support schedule does not start at \$0. Arizona is a case in point; its schedule starts at \$720 per month. Although silent in its guideline, the intent of the Arizona authors was for discretion to be exercised below the lowest income considered in the schedule.

Exhibit 4-2 also shows that the income thresholds for applying minimum order amounts vary among states. The average among states using gross income is \$619 per month and ranges between \$50 and \$800. The average among states using net income is \$617 per month and ranges between \$43 and \$1,000. Generally, these amounts relate to the federal poverty level at the time the state developed or last revised its schedule or formula. The current (2001) federal poverty level for one person is \$716 per month. This is below what would be earned from full-time employment at minimum wage (\$892 per month gross or approximately \$770 per month net).

| Exhibit 4-2 Monthly^a Minimum Support Amounts and Low-Income Threshold | | | |
|---|---|---|--|
| STATE | Minimum Order Amount^b | Income Threshold for Applying Minimum Order Amount^c | Adjustment for Incomes Above Threshold Used for Minimum Order Amounts |
| Alabama | Not addressed | \$550 gross | Yes |
| Alaska | \$50 | Federal poverty level | No |
| Arizona | Not addressed | \$720 gross | Yes |
| Arkansas | Not addressed | Not addressed | No |
| California | Not addressed | Not addressed | No |
| Colorado | \$20–\$50 | \$400 gross | Yes |
| Connecticut | \$4.33 | \$43 net | Yes |
| Delaware | Varies with the number of children, starts at \$65 | \$750 net | Yes |
| District of Columbia | \$50 | \$625 gross | No |
| Florida | Discretion | \$650 net | Yes |
| Georgia | Not addressed | Not addressed | No |
| Hawaii | \$50 | \$743 net | Yes |
| Idaho | \$50 per child | \$800 gross | No |
| Illinois | Not addressed | Not addressed | No |
| Indiana | Discretion | \$433 gross | Yes |
| Iowa | Varies with the number of children | \$500 net | Yes |
| Kansas | Not addressed | \$50 gross | Yes |
| Kentucky | \$60 | \$100 net | Yes |
| Louisiana | Not addressed | \$600 gross | Yes |
| Maine | 10% of gross income per child | Poverty level | Yes |
| Maryland | \$20–\$50 | \$600 gross | Yes |
| Massachusetts | \$50 | \$541 gross | Yes |
| Michigan | Formula starting with 10% of net income | \$645 net | Yes |
| Minnesota | Discretion | \$550 net | Yes |
| Mississippi | Discretion | \$417 gross | No |
| Missouri | \$20–\$50 | \$800 gross | Yes |
| Montana | Formula | 130% of federal poverty level | Yes |
| Nebraska | \$50 | \$650 net | Yes |
| Nevada | Not addressed | Not addressed | No |
| New Hampshire | \$50 | \$658 gross | Yes |
| New Jersey | \$22 | 105% poverty level | Yes |
| New Mexico | Varies with the number of children, starts at \$100 | \$800 gross | Yes |
| New York | \$50 | 135% poverty level | Yes |
| North Carolina | \$50 | \$800 gross | Yes |
| North Dakota | Varies with the number of children, starts at \$14 | \$100 net | No |
| Ohio | Not addressed | \$500 gross | Yes |
| Oklahoma | \$50 | \$650 gross | Yes |
| Oregon | \$50 | \$850 gross | Yes |
| Pennsylvania | Varies with the number of children, starts at \$50 | \$550 net | Yes |
| Rhode Island | \$20–\$50 | \$600 gross | Yes |

| Exhibit 4-2 Monthly^a Minimum Support Amounts and Low-Income Threshold | | | |
|---|--|--|--|
| STATE | Minimum Order Amount ^b | Income Threshold for Applying Minimum Order Amount ^c | Adjustment for Incomes Above Threshold Used for Minimum Order Amounts |
| South Carolina | \$50 | \$600 gross | Yes |
| South Dakota | \$50 | \$1000 net | Yes |
| Tennessee | Not addressed | Not addressed | No |
| Texas | Not addressed | Not addressed | No |
| Utah | \$20 | \$650 gross | Yes |
| Vermont | \$50 | \$816 net | Yes |
| Virginia | \$65 | \$600 gross | Yes |
| Washington | \$25 per child | \$600 net | No |
| West Virginia | \$50 | \$550 gross | Yes |
| Wisconsin | Not addressed | Not addressed | No |
| Wyoming | \$50 | \$732 net | No |
| TOTAL NUMBER OF STATES | Dollar or formula amt = 34 | Threshold identified = 43 | Yes = 36 |
| | Not addressed = 13 | No threshold = 8 | No = 15 |
| | Discretion = 4 | Average gross = \$619 | |
| | | Average net = \$617 | |

^aChild support schedules based on weekly amounts are converted to monthly amounts assuming 4.33 weeks in a month.

^bSeveral of the state child support guidelines include a table that does not start at \$0 income. In this situation, the lowest amount appearing in the schedule is used as the income threshold. The state may specify an amount below these thresholds, say it is discretionary, or not address it. For some states (for example, Arizona) where the schedule does not start at zero, incomes less than the lowest amount considered in the schedule are not addressed, but the intent is that the court has discretion.

^cA few states did not specify the income threshold but did specify the obligor's self-support reserve amount. Implicitly, the sum of the minimum order amount and the self-support reserve would be the income threshold for minimum order amounts.

As evident in Exhibits 4-2 and 4-3, 36 states also apply an additional adjustment for low incomes above the threshold for the minimum order amount. These additional adjustments take several different forms and must consider the guideline's model and schedule or formula structure. Most rely on a "self-support reserve"; that is, enough income after payment of taxes and child support for the obligor to maintain a subsistence standard of living. The amount of the self-support reserve is at the discretion of the state, but most states relate it to the federal poverty level for one person at the time the guideline was developed or last revised. For many states, the self-support reserve is also equivalent to the income threshold for applying the minimum support order amount. As displayed in Exhibit 4-3, the average self-support reserve is \$641 per month net.

| Exhibit 4-3 Low-Income Adjustments Above Incomes Where Minimum Support Orders Would Be Applied | | | | |
|---|--|--|------------------------------------|------------------------------|
| STATE | Adjustment for Incomes Above Threshold for Minimum Order Amounts | Adjustment Method | Monthly Self-Support Reserve (SSR) | Guideline's Model/Formula |
| Alabama | Yes | SSR incorporated into schedule | \$447 net | Income shares table |
| Alaska | No | | | Percentage of obligor income |
| Arizona | Yes | Ability to calculation in worksheet | \$710 gross | Income shares table |
| Arkansas | No | | | Percentage of obligor income |
| California | No | | | Income shares formula |
| Colorado | Yes | SSR incorporated into schedule | \$447 net | Income shares table |
| Connecticut | Yes | SSR incorporated into shaded schedule | \$645 net | Income shares table |
| Delaware | Yes | SSR subtracted from income | \$750 net | Melson formula |
| District of Columbia | No | | | Hybrid ^a |
| Florida | Yes | SSR incorporated into schedule | \$568 net | Income shares table |
| Georgia | No | | | Percentage of obligor income |
| Hawaii | Yes | SSR subtracted from income | \$743 net | Melson formula |
| Idaho | No | | | Income shares formula |
| Illinois | No | | | Percentage of obligor income |
| Indiana | Yes | Lowered amounts in schedule | Unknown ^b | Income shares table |
| Iowa | Yes | Lowered percentages applied to lower incomes | Not applicable ^c | Income shares table |
| Kansas | Yes | SSR incorporated into schedule | Unknown | Income shares table |
| Kentucky | Yes | SSR incorporated into schedule | \$447 net | Income shares table |
| Louisiana | Yes | SSR incorporated into schedule | \$552 net | Income shares table |
| Maine | Yes | SSR incorporated into schedule | \$596 net | Income shares table |
| Maryland | Yes | SSR incorporated into schedule | \$447 net | Income shares table |
| Massachusetts | Yes | Lowered Percentages applied to lower incomes | Not applicable | Hybrid ^a |
| Michigan | Yes | Formula | \$645 net | Income shares formula |
| Minnesota | Yes | Lowered Percentages applied to lower incomes | Not applicable | Percentage of obligor income |
| Mississippi | No | | | Percentage of obligor income |
| Missouri | Yes | SSR incorporated into schedule | \$658 net | Income shares yable |
| Montana | Yes | SSR subtracted from income | \$892 net | Melson |
| Nebraska | Yes | SSR incorporated into schedule | \$696 net | Income shares yable |
| Nevada | No | | | Percentage of obligor income |
| New Hampshire | Yes | Difference between SSR and net income | \$658 net | Percentage of obligor income |
| New Jersey | Yes | SSR adjustment made in worksheet | 105% of poverty | Income shares table |
| New Mexico | Yes | SSR incorporated into schedule | \$613 net | Income shares table |
| New York | Yes | Difference between SSR and net income | 135% of poverty | Percentage of obligor income |
| North Carolina | Yes | SSR incorporated into shaded schedule | \$658 net | Income shares yable |
| North Dakota | No | | | Percentage of obligor income |
| Ohio | Yes | SSR incorporated into schedule | \$568 net | Income Shares Table |
| Oklahoma | Yes | SSR incorporated into schedule | Varies | Income shares table |
| Oregon | Yes | SSR incorporated into schedule | \$658 net | Income shares table |
| Pennsylvania | Yes | SSR incorporated into shaded schedule | \$550 net | Income shares table |
| Rhode Island | Yes | SSR incorporated into schedule | \$658 net | Income shares table |

| Exhibit 4-3 Low-Income Adjustments Above Incomes Where Minimum Support Orders Would Be Applied | | | | |
|---|--|---|------------------------------------|---|
| STATE | Adjustment for Incomes Above Threshold for Minimum Order Amounts | Adjustment Method | Monthly Self-Support Reserve (SSR) | Guideline's Model/Formula |
| South Carolina | | SSR incorporated into shaded schedule | \$500 net | Income shares schedule |
| South Dakota | Yes | SSR incorporated into schedule | 150% of poverty | Income shares schedule |
| Tennessee | No | | | Percentage of obligor income |
| Texas | No | | | Percentage of obligor income |
| Utah | Yes | Additional table for low income | Approx. \$625 gross | Income shares schedule |
| Vermont | Yes | SSR adjustment in worksheet | \$816 net | Income shares schedule |
| Virginia | Yes | SSR incorporated into shaded schedule | \$458 net | Income shares schedule |
| Washington | No | | | Income shares schedule |
| West Virginia | Yes | SSR adjustment in worksheet | \$550 net | Income shares schedule |
| Wisconsin | No | | | Percentage of obligor income |
| Wyoming | No | | | Income shares formula |
| TOTAL NUMBER OF STATES | Yes = 36 No = 15 | SSR incorporated into schedule = 17 SSR in shaded schedule = 4 SSR in worksheet = 4 Lowered % = 3 Income – SSR = 3 Other = 3 | Avg. = \$641 | Income shares = 33 states % of obligor income = 13 states Melson formula = 3 states |

^a In hybrid states, a percentage of obligor income is applied when obligee income is low. For higher levels of obligee income, an income shares approach is used.

^b It is unclear whether Indiana used a self-support reserve to adjust the low-income portion of its schedule, but it is evident some adjustment was made because order amounts in some instances don't vary with the number of children at the lowest incomes.

^c The amounts were lowered in the Iowa schedule to allow for a lower amount when obligor income is less than \$720 per month.

The more common methods for adjusting for low income are summarized below.

- *Reduction in percentage applied to support order.* This method is used more frequently in states where the guideline's model only considers the obligor's income in establishing a support amount. It simply applies a smaller percentage to child support at lower incomes. Iowa, Minnesota, and Massachusetts apply this approach.
- *Difference between the self-support reserve and obligor net monthly income.* This is the most common approach taken in income shares states and Melson formula states. It takes three different forms.
 - ✓ *Melson states.* A self-support reserve is subtracted from both parents' net monthly income before the child support order amount is calculated in all three states using the Melson formula (Delaware, Hawaii, and Montana). The adjusted income amounts are used to apportion the child's primary support between the parents. If the obligor has income after subtracting the self-

support reserve and his or her share of the child's primary support, an additional percentage is applied to that remaining income for child support.

- ✓ *Self-support reserve incorporated into income shares schedules.* Most (21) states with an additional low-income adjustment use this method. Typically invisible to the user, a self-support reserve is incorporated into the schedule. An example of this is shown in Exhibit 4-4. The amounts that appear in the schedule are the differences between the self-support reserve and net incomes. In gross income guidelines, the net equivalents are calculated before arriving at the differences. Most states reduce the difference by 5–10 percent so the obligor pays only 90–95 percent of each additional dollar in increased income to child support.

Some states “shade” the area that the self-support reserve is applied. If obligor income falls into the shaded area, two child support calculations are made. The first calculates the child support order using both parents' incomes. The second calculates it based on the obligor's income only and assumes that the obligee income is zero. The lower of these two amounts is used. This additional calculation is necessary because in some circumstances (for example, when the obligor has extraordinarily low income and the obligee has extraordinarily high income), the order amount would be less than the difference between the obligor's net income and the self-support reserve.

The self-support reserve is phased out of the schedule when child-rearing expenditures are less than the adjusted difference between obligor net monthly income and the self-support reserve. Although these amounts vary depending on the level of the self-support reserve, the adjustment is usually phased out when monthly gross income reaches \$1,150 per month for one child and \$1,350 per month for two children.

Exhibit 4-4

Example of a Low-Income Adjustment With Self-Support Reserve Incorporated Into Schedule

| COMBINED NET MONTHLY INCOME | Use noncustodial parent income only for the darker shaded areas of the schedule on the first page; combined parent income for the remainder of the schedule. | | | | | |
|--------------------------------------|--|------------|------------|------------|------------|------------|
| | 1 Child | 2 Children | 3 Children | 4 Children | 5 Children | 6 Children |
| 0-700 | 50 | 50 | 50 | 50 | 50 | 50 |
| 750 | 50 | 50 | 50 | 50 | 51 | 51 |
| 800 | 94 | 95 | 96 | 97 | 98 | 99 |
| 850 | 139 | 140 | 142 | 143 | 145 | 146 |
| 900 | 184 | 186 | 188 | 190 | 192 | 194 |
| 950 | 229 | 231 | 234 | 236 | 239 | 241 |
| 1,000 | 244 | 277 | 280 | 283 | 286 | 289 |
| 1,050 | 256 | 322 | 326 | 329 | 333 | 336 |
| 1,100 | 268 | 368 | 372 | 376 | 380 | 384 |

| COMBINED NET MONTHLY INCOME | Use noncustodial parent income only for the darker shaded areas of the schedule on the first page; combined parent income for the remainder of the schedule. | | | | | |
|--------------------------------------|--|------------|------------|------------|------------|------------|
| | 1 Child | 2 Children | 3 Children | 4 Children | 5 Children | 6 Children |
| 1,150 | 280 | 409 | 418 | 422 | 427 | 431 |
| 1,200 | 291 | 425 | 464 | 469 | 474 | 479 |
| 1,250 | 302 | 440 | 510 | 515 | 521 | 526 |
| 1,300 | 313 | 456 | 540 | 562 | 568 | 574 |
| 1,350 | 324 | 472 | 559 | 608 | 615 | 621 |
| 1,400 | 336 | 488 | 577 | 638 | 662 | 669 |
| 1,450 | 347 | 503 | 596 | 658 | 709 | 716 |
| 1,500 | 358 | 519 | 614 | 679 | 736 | 764 |
| 1,550 | 369 | 535 | 633 | 699 | 758 | 811 |

- ✓ *Self-support reserve adjustment made in the worksheet.* A few states (Arizona, New Jersey, Vermont, and West Virginia) compare
1. The difference between the self-support reserve and obligor income; and
 2. The proposed order amount including add-ons for child care, the child's extraordinary medical expenses, and other permissible add-ons.

The lower amount becomes the order amount. An example of this adjustment is displayed in Exhibit 4-5.

Addressing Low Income in States' Guideline Reviews

One of the most common and frequently discussed issues among states that recently reviewed their guideline concerns low-income obligors. Some of the specific concerns that were heard from guideline committee members are:

- Considering the obligor's ability to pay;
- Not adding to the burgeoning amount of child support arrears owed in the state;
- Providing adequate support for the children;
- Not setting orders so high that the obligor becomes alienated from his or her child; and
- Understanding that there was not enough income to adequately support the family before, let alone to adequately provide for two households now.

Exhibit 4-5
Example of a Low-Income Adjustment Incorporated Into a Worksheet

| CHILD SUPPORT WORKSHEET: SOLE CUSTODY | | | |
|---|---------------|---------------|-----------------|
| Number of Children = 2, mother is custodial parent | | | |
| | Mother | Father | Combined |
| I. CALCULATION OF SUPPORT | | | |
| 1. Net Monthly Income | \$793 | \$793 | \$1,586 |
| 2. Proportional Share of Income | 50% | 50% | 100% |
| 3. Child Support Guideline Amount | | | \$460 |
| 4. Each Parent's Obligation (Multiply Line 3 by Line 2 for each parent) | \$230 | \$230 | |
| II. ABILITY TO PAY CALCULATION | | | |
| 5. Obligor's Net Monthly Income | \$793 | | |
| 6. Self-Support Reserve | \$696 | | |
| 7. Income Available for Support (Line 5 – Line 6). If less than \$50, enter \$50. | \$ 97 | | |
| 8. Support Order (whichever amount is less: obligor's Line 4 or Line 7) | \$ 97 | | |

In short, the issue is an extremely difficult one, but guidelines are limited by the incomes of the parents. If both parents have incomes below the poverty level, it is impossible to leave both households with income above the poverty level after payment or receipt of child support.

Most states that have recently revised their schedule typically decrease the amounts for low incomes somewhat. To PSI's knowledge, no state has increased them, and no state has radically lowered the amounts.

In addition to requiring some difficult policy decisions when it comes to low-income adjustments, there are some technical issues in applying the adjustment.

- *Imputation of income.* Imputation of income may push the obligor's income outside the range of where the low-income adjustment would be applied. For example, in South Dakota, income is imputed at what would be earned working full-time at a minimum wage for either parent if income information is unavailable or the parent is not working (assuming the parent does not have disabilities). Although the South Dakota schedule incorporates a self-support reserve equivalent to 150 percent of the poverty level, imputation of income to both parents results in incomes that exceed the area of the schedule where the self-support reserve is applied, rendering the self-support reserve ineffective. Aware of this, the 2000 South Dakota Guidelines Review Commission has proposed changes to correct this.

- *Two calculations when support is prorated.* Two calculations may be required because the prorated support of the child may be less in cases where the obligor income is extremely low and the obligee income is extremely high than if the low-income adjustment was only applied to obligor income. To illustrate this, consider a case where obligor income is \$500 per month, obligee income is \$9,500 per month, and the basic support for the child is \$400 per month. If the child's basic support is prorated between the parents, the obligor's share would only be 5 percent (\$20), which may be less than the low-income adjusted order.
- *Interaction with other factors.* More states are addressing how low-income adjustments interact with adjustments for other factors, such as shared parenting time adjustments and additional dependents. In some states (for example, New Jersey), this also extends to the low income of the custodial parent household. Specifically, New Jersey does not allow a shared parenting adjustment if the custodial parent household income is below 200 percent of the poverty level.
- *Interaction with add-ons.* Several states provide add-ons to the basic obligation for work-related child care, extraordinary medical expenses, education expenses, and other expenses. The question is whether the low-income adjustment should be made before or after these add-ons. In states with both a low-income adjustment and add-ons, most states make the low-income adjustment before the add-ons are applied.

GROSS VERSUS NET INCOME

This section begins with a basic comparison of arguments for and against the use of gross and net income in child support guidelines. What other states do and what recent challenges they have faced regarding the treatment of income in guidelines are then discussed. Issues specific to California are addressed last.

Use of Income in Other States

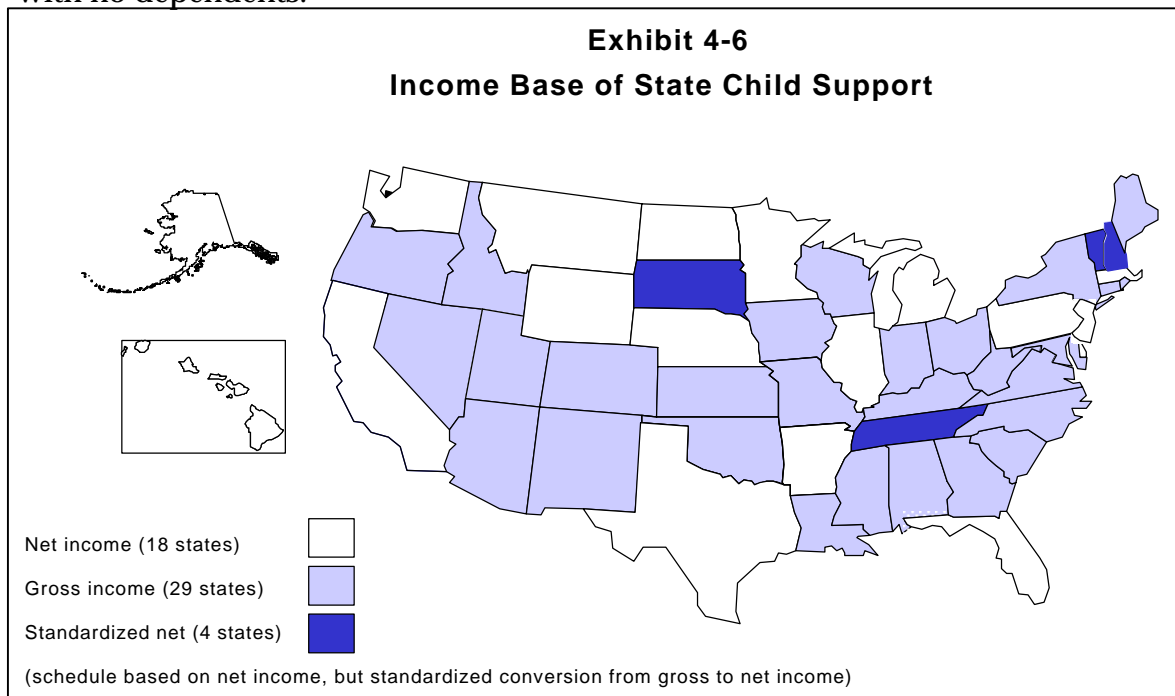
States have grappled with whether to base their child support guidelines on gross or net income since guidelines were first developed. The fact that most child-rearing expenditures are made from spendable (after-tax) income provides an argument favoring the use of net income. Net income also excludes mandatory deductions such as retirement or union dues.²⁴ A factor important to many states that consider both parents' incomes in calculating support obligations is that net income accounts for

²⁴ Lynne Gold-Bikin and Linda An Hammond, "Determination of Income" in *Child Support Guidelines: The Next Generation*, ed. by Margaret Campbell Haynes, U.S. Department of Health and Human Services, Administration for Families, Office of Child Support Enforcement (April 1994).

the differences in tax consequences due to one parent claiming the children and the other parent not claiming them.²⁵

The simplicity of applying gross income, which does not require knowledge of the tax consequences of the parent(s), provides a strong argument favoring the use of gross income. Another benefit of using gross income involves equity issues. Order amounts based on a gross income schedule are unaffected by a change in the tax consequences of the obligor (and the obligee in guidelines where both parents' incomes are considered). Thus, for example, two obligors with identical circumstances except that one is remarried and one is not would be treated the same using gross income. However, if net incomes were used, their tax consequences would differ; in turn, this would cause differences in their child support order amounts.

Exhibit 4-6 indicates which states base their child support guidelines on gross income (29 states) and net income (22 states). It also shows the use of a subcategory, standardized net income. These four states have child support schedules based on net income, but have a standardized method for converting gross to net income. For example, Tennessee guidelines, a percentage of obligor income model, converts gross to net income assuming that the obligor is a taxpayer filing as a single individual with no dependents.



²⁵ Differences in tax consequences are explored further by R. Mark Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation" (Spring 1999) 33(1) *Family Law Quarterly*. Rogers graphs out the after-tax, after-child support incomes of the custodial and noncustodial parent as a proportion of their respective poverty level.

The standardized net income method allows the guidelines to gain some of the advantages of simplicity and equity realized from a gross income schedule, but the differences in tax consequences between the custodial and noncustodial parent that result from claiming the children in guidelines that consider both parents' incomes can also be recognized. Vermont is another example of a state that uses a guideline based on standardized net income. The different tax consequences between the obligor and obligee due to claiming the children as exemptions are considered. The Vermont guideline includes two tables that convert gross to net income for the obligor and the obligee; one converts gross to net income in sole custody circumstances, and the other converts gross to net income in shared custody circumstances. In Exhibit 4-7, a portion of the Vermont gross to net income conversion table for sole-custody situations is displayed.

Exhibit 4-7
Example of How Vermont Standardizes Gross Income

| Monthly Adjusted Gross Income Range | | | Custodial Parent After-Tax Income | | | | | | Noncustodial Parent After- Tax Income |
|--|---|---------|-----------------------------------|-----------------|-------------------|------------------|------------------|-----------------|---|
| | | | (Sole or Split Custody) | | | | | | |
| | | | One Child | Two Children | Three Children | Four Children | Five Children | Six Children | |
| | | | | | | | | | |
| 575.00 | - | 624.99 | 789 | 853 | 853 | 853 | 853 | 853 | 574 |
| 625.00 | - | 674.99 | 835 | 924 | 924 | 924 | 924 | 924 | 606 |
| 675.00 | - | 724.99 | 881 | 995 | 995 | 995 | 995 | 995 | 638 |
| 725.00 | - | 774.99 | 927 | 1066 | 1066 | 1066 | 1066 | 1066 | 670 |
| 775.00 | - | 824.99 | 973 | 1127 | 1127 | 1127 | 1127 | 1127 | 702 |
| 825.00 | - | 874.99 | 1020 | 1173 | 1173 | 1173 | 1173 | 1173 | 736 |
| 875.00 | - | 924.99 | 1066 | 1219 | 1219 | 1219 | 1219 | 1219 | 773 |
| 925.00 | - | 974.99 | 1112 | 1265 | 1265 | 1265 | 1265 | 1265 | 810 |
| 975.00 | - | 1024.99 | 1158 | 1312 | 1312 | 1312 | 1312 | 1312 | 847 |
| 1025.00 | - | 1074.99 | 1196 | 1350 | 1350 | 1350 | 1350 | 1350 | 884 |
| 1075.00 | - | 1124.99 | 1231 | 1383 | 1383 | 1383 | 1383 | 1383 | 921 |

Assumes noncustodial parent files as a single tax payer (that is, two withholding allowances for employer withholding to simulate one exemption and the standard deduction) and custodial parent files as a head of household and claims the children as dependents. Considers federal and state personal income tax and FICA. Federal tax considers earned income tax credit and child tax credit.

One obvious disadvantage to the Vermont approach is that it adds two tables to the guideline and makes it more complex.

Experiences of Guideline Review Committees

In reviewing their guidelines, most states do not consider a complete switch from net to gross income or vice versa. With regard to income, most guideline review committees focus on refining existing definitions and whether and how to include recent changes in federal tax code that favor the obligee (such as increases in the earned income tax credit and the child tax credit). Recent refinements to income

definitions involve the treatment of income from a second job, the treatment of voluntary and involuntary pretax contributions to pension funds, and other refinements or technical changes. The issue concerning the federal tax codes pertains only to guidelines based on gross income. These states generally dismiss the alternative of gross-to-net conversion tables similar to those used in Vermont because they would make the guidelines more cumbersome. Instead, most use tax assumptions that favor the obligor when converting child-rearing expenditures that are estimated as a proportion of net income to those relating to gross income. This method makes the tax assumptions invisible to the guideline user but results in an easy-to-use child support schedule.

Use of Net Income in California

The California child support guideline is based on net disposable income. It specifically excludes state and federal income tax liability resulting from the parties' taxable income. It further states that tax liability should be based on the parents' actual filing status (single, married, married filing separately, or head of household) and on the actual number of dependents claimed. As discussed above, several states have recently used their quadrennial guideline reviews to refine and make technical changes in defining income. Below, similar refinements and technical changes recommended by George Norton, the author of the California child support guideline, are listed.²⁶ Where appropriate, recent case law is discussed.

- *Definition of net disposable income can result in negative amounts.* Norton reports that the definition of net disposable income in California Family Code section 4059 can result in a negative amount. Norton suggests a simple solution: limiting the remainder from subtracting deductions from gross income so that it can never be a negative number.
- *Application of tax changes due to new spouse income.* There have been several recent court cases addressing the change in tax consequences due to the income of a new spouse. *In re Marriage of Carlsen* (1996) 50 CA4th 212, 57 CR2d 630, the obligee's share of the tax liability of herself and her new spouse was determined by apportioning it according to her share of their combined gross income. Effectively, this increased the amount of the obligee's tax liability; in turn, this decreased the amount of her net disposable income available for child support.²⁷ The obligor objected to the calculation pursuant to Family Code section 4057.5, which precludes the consideration of spousal income in the support order calculation. The appellate court affirmed the lower court's decision to consider

²⁶ George Norton, *Legislative Changes—Family Code Child Support Guidelines* (unpublished). Paper submitted to the Judicial Council of California (October 2000).

²⁷ Norton points out that this will not always result in a decrease in net disposable income; it depends on the relative income of the parent and the new spouse.

the new spouse's income in order to determine the appropriate tax rate of the obligee. In *County of Tulare v. Campbell* (1996) 50 CA4th 847, 57 CR2d 902, the trial court refused to consider new spouse income in a modification action. The appellate court reversed and remanded on the basis that section 4057.5 does not preclude the consideration of new spouse income for the limited purpose of determining actual tax liability. In both cases, it was ruled that the purpose of section 4057.5 is to protect the new spouse's income from child support liability when the new spouse has no legal responsibility for the children, and that in order to compute net disposable income under section 4059, new spouse income may be considered to determine the actual tax liability of the parties.

Norton argues that one of the underlying problems is how the obligee/obligor's share of the tax liability of the obligee/obligor and his or her new spouse should be calculated. Norton compares several possible formulas for determining the obligee/obligor's share of the tax liability, including comparing the difference between:

- ✓ The sum of the obligee/obligor's tax liability if he or she had filed separately and the obligee/obligor's new spouse's tax liability if he or she had filed separately; and
- ✓ The tax liability of the obligee/obligor and his or her new spouse if they filed jointly.

This difference, in turn, would be prorated to the obligee/obligor. The prorated difference would then be added (or subtracted if it was a negative amount) to the obligee/obligor's tax liability if he or she had filed separately.

Norton also suggests another method that would simply assume that the obligee/obligor has not remarried but allocates the exemptions and deductions of the obligee/obligor and his or her new spouse equitably in the calculation of the obligee/obligor's tax liability.

Although not suggested by Norton, another alternative would be the New Jersey approach, "If a joint income tax return includes income of a person other than one of the parties involved in the support proceeding (e.g., current spouse), the taxpayer or that person's attorney shall be responsible for the redaction of the tax return."²⁸

- *Potential distortions to net income.* Norton suggests that federal and state tax codes provide several opportunities to distort income (for example, depreciation deductions, which can decrease the amount of money available to pay support; and inordinate mortgage interest deductions, which can increase the amount of

²⁸ *New Jersey Child Support Guidelines: Court Rule 5:6a and Appendix IX* (May 13, 1997).

money available to pay support). A simple solution, as suggested by Norton, is to allow the court to consider the tax liability assuming the party used the standard deduction if it provides a more equitable amount of child support.

- *Voluntary and involuntary tax-deferred retirement contributions.* California excludes involuntary retirement contributions from income used to compute child support but includes voluntary contributions. Norton suggests this is inequitable treatment and provides suggestions for rectifying it.

ADDITIONAL DEPENDENTS

In this section, the treatment of children from prior or subsequent relationships (additional dependents) is examined. First, how the California child support guideline deals with this issue and any case law surrounding the issue are reviewed, then how additional dependents are treated in other states and some of the issues they have faced while addressing additional dependents are reviewed.

Treatment of Additional Dependents in California

An adjustment for additional dependents is provided under two sections of the California child support guideline. First, a deduction for additional dependents can be made from the parent's annual income to arrive at the net disposable income used in the guideline calculation (Fam. Code, § 4059).

Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision (Fam. Code, § 4059(e)).

Additional dependents are also a circumstance evidencing hardship, which allows the court to take a deduction from income (Fam. Code, § 4071).

The minimum basic living expenses of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, on its own motion or on the request of a party, may allow these income deductions as necessary to accommodate these expenses after

making the deductions allowable under paragraph (1) (Fam. Code, § 4071(a)(2)).

The maximum hardship deduction under paragraph (2) of subdivision (a) for each child who resides with the parent may be equal to, but shall not exceed, the support allocated each child subject to the order. For purpose of calculating this deduction, the amount of support per child established by the statewide uniform guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) or subdivision (b) of Section 4055 (Fam. Code, § 4071(b)).

The major difference between the two sections is that Family Code section 4059(e) does not apply to additional dependents residing with the parent, whereas the hardship deduction does.

Criticisms of Family Code Section 4071(b)

A recent article by George Norton, author of the California child support guideline, suggests that the hardship deduction for additional dependents is mathematically flawed.²⁹ Namely, he takes two issues with Family Code section 4071(b).

- The amount subtracted for an additional dependent cannot exceed the support per child under the guideline for the children who are the subject of the order; and
- It allows the amount subtracted for an additional dependent to be equivalent to the support per child under the guideline for the children who are the subject of the order.

He illustrates the first flaw by using an example where the parents have equal income and equal time with their child; therefore a zero order. If either parent has an additional dependent, then Family Code section 4071(b) limits the amount that can be subtracted to \$0, the guideline amount for their common child. Effectively, no adjustment for additional dependents can be made in this case.

The second flaw is illustrated by considering a case where

- The obligor has extraordinarily high income;
- The obligee has extraordinarily low income;
- There is one common child; and

²⁹ George Norton, "The Hardship Deduction Error: Politics and the Random Disparate Treatment of Children," *Family Law News* (official publication of the State Bar of California Family Law Section), San Francisco, California.

- The obligee has an additional dependent.

In this situation, it is possible that the guideline amount for the one common child (for example, \$1,100 per month) could exceed the net income of the obligee (for example, \$1,000 per month) because the adjustment can equal that of the guideline amount for the common child. Hence, the obligee's net disposable income after subtracting for the additional dependent would be less than zero.

Case Law

In re Marriage of Paulin (1996) 46 CA4th 1378, 54 CR2d 314, the trial court allowed a hardship deduction under Family Code section 4071(a)(2) for subsequent born twins of the obligor. In this case, the court calculated the hardship deduction and then cut it in half to reflect the shared responsibility of the obligor and his new wife for the twins. The obligation for the two prior born children was reduced from \$1,511 per month to \$1,338 per month. The appellate court affirmed this decision, stating that the hardship deduction should not be a foregone conclusion any time an obligor has subsequent children, but that in this case the lower court had properly considered the necessary expenses for food, clothing, shelter, and child care of the subsequent born children.

Treatment of Additional Dependents in Other States

As shown in Exhibit 4-8 below, only 5 states do not address the issue of additional dependents. Most states treat it as a deviation criterion, yet 4 of these 21 states specify a formula for it. The most commonly used formula is subtracting a "dummy order" from the parent's income. The dummy order is the guideline-determined amount for the additional dependents. South Carolina weights the dummy order by 75 percent to equalize support between the two sets of children. (The 75 percent weight was determined through simulation of a wide range of possible scenarios.) On the other hand, North Carolina weights the dummy order by 50 percent. Presumably this splits the responsibility of the additional dependents between the parent eligible for the adjustment and the other parent of the additional dependent.

New Jersey and North Dakota specify that the dummy order should be calculated considering the income of the other parent of the additional dependent. Florida excludes consideration of the income of the other parent of the additional dependent. Clearly, the advantage of including the income of the other parent is that it more precisely reflects the costs of the additional dependent to the parent subject to the support order, but the disadvantage is that it requires additional information and makes the calculation of the dummy order more cumbersome.

Exhibit 4-8
Treatment of Additional Dependents in Child Support Guidelines^a

| STATE | SPECIFICATION |
|----------------------|---|
| Alabama | Deviation, dummy order |
| Alaska | Deviation, no formula specified |
| Arizona | Dummy order |
| Arkansas | Deviation, no formula specified |
| California | Deviation, may equal but not exceed per child guideline amount for children subject to order |
| Colorado | Dummy order |
| Connecticut | Deviation, dummy order |
| Delaware | % Adjustment-credit to order amount |
| District of Columbia | Dummy order |
| Florida | Deviation, no formula specified |
| Georgia | Deviation |
| Hawaii | Deviation |
| Idaho | Dummy order |
| Illinois | Dummy order |
| Indiana | Reasonable amount necessary to support additional dependents |
| Iowa | 150% of TANF standard of need |
| Kansas | Prorated basic support |
| Kentucky | Dummy order |
| Louisiana | Deviation, no formula specified |
| Maine | Dummy order |
| Maryland | Deviation |
| Massachusetts | Deviation |
| Michigan | % Reduction to income |
| Minnesota | Deviation |
| Mississippi | Deviation |
| Missouri | Dummy order |
| Montana | 50% of primary support |
| Nebraska | Deviation |
| Nevada | Deviation |
| New Hampshire | Not addressed |
| New Jersey | Dummy order (based on income of the other parent to the additional dependent also) |
| New Mexico | Dummy order |
| New York | Deviation |
| North Carolina | 50% of the dummy order |
| North Dakota | Dummy order (considers income of the other parent to the additional dependent also) |
| Ohio | Formula-federal tax exemption |
| Oklahoma | Not addressed |
| Oregon | Prorated basic support |
| Pennsylvania | Deviation, permissible only if the sum of dummy order and support order are more than 50% of the obligor's net income |
| Rhode Island | Not addressed |
| South Carolina | Deviation, 75% of dummy order |

Exhibit 4-8
Treatment of Additional Dependents in Child Support Guidelines^a

| STATE | SPECIFICATION |
|------------------------|---|
| South Dakota | Deviation, no formula specified |
| Tennessee | Not addressed |
| Texas | Prorated basic support |
| Utah | Dummy order |
| Vermont | Dummy order |
| Virginia | Deviation, no formula specified |
| Washington | Deviation, no formula specified |
| West Virginia | Not addressed |
| Wisconsin | Dummy order |
| Wyoming | Deviation, no formula specified |
| TOTAL NUMBER OF STATES | Not addressed = 5 states Deviation, with formula = 4 states Deviation, no formula specified = 17 states Subtract dummy order = 14 states Subtract other amount/other method = 11 states |

^aWith the exception of Delaware, the amounts are subtracted from the income of the parent with the additional dependent prior to calculation of the support amount. Thus, for most states a “dummy order,” that is, the theoretical guideline amount for the additional dependent, is subtracted from the qualifying parent’s income; then the support amount is calculated. In Delaware, the support amount for the children subject to the order determination is calculated first and then this is reduced by a percentage that varies according to the number of additional dependents.

Although dummy orders are the most common method of adjusting for additional dependents, states use a variety of other methods. For instance, Iowa uses 150 percent of the amount of the Temporary Assistance for Needy Families (TANF) grants and Ohio uses a formula based on the federal tax exemption.

With the exception of Delaware, the adjustments are made to the eligible parent’s income before the calculation of the support amount for the common children. Delaware is the only state where the adjustment is made after the calculation of support. No other state has a specification similar to that of California.

Other issues pertaining to additional dependents include:

- Whether one set of children should have priority based on birth order; and
- How the additional dependent adjustment is applied to modifications.

Birth order. A few states limit the additional dependent adjustment to children born prior to the children subject to the child support order. The rationale behind this is that first families have priority. The Colorado guideline is a case in point; however, its guideline review commission currently is proposing to expand the adjustment to all additional dependents, regardless of birth order.³⁰ The reconsideration is partially

³⁰ Diane Young, *First in Time, First in Line*, Issue Paper, Colorado Child Support Guidelines Commission, Denver, Colorado (November 16, 2000).

due to testimony concerning a divorce case where the only child—a son—became the custody of the father, who did not seek child support. Subsequently, the father remarried and had four additional children with his new spouse. Seven years later, the first son decided to live with his mother, who then sought child support. An additional dependent adjustment for the four subsequent children cannot be applied, however, because of the limitation in the Colorado guideline. Another situation where the adjustment would not apply is if the obligor had a nonmarital birth that he did not know about until after he married and had additional children.

Order modification. Some states (for example, Vermont) exclude the use of the additional dependent adjustment in modifications if it lowers the previous support order amount. Utah specifies that it can be applied in modifications to lessen an increase in the support amount, but it cannot be used to justify a decrease in the support amount.

OTHER ISSUES FACED BY STATES

Adjustments for low-income obligors and additional dependents are frequently discussed in quadrennial reviews of child support guidelines. The use of net and gross income is less frequently debated. Other frequently discussed issues are:

- Shared parenting time adjustments; and
- Child-rearing costs.

Shared Parenting Time Adjustments

Working with guideline review committees, shared parenting time adjustments are typically found to be a more divisive issue in states that have never had any form of a shared parenting adjustment other than allowing it to be a deviation criterion. In those states, the bigger issues concern (1) what the formula should look like and (2) what happens when shared parenting time is not exercised at the amount used to calculate the support order.

With the exception of Arizona, issues and changes to the shared parenting time adjustments in states have been relatively minor in the past few years. West Virginia and Oklahoma made small increases in the time-sharing threshold for applying the shared parenting time adjustment a year after they adopted the original adjustment. In both states it was done so that the adjustment would apply to cases where the time-sharing arrangements of the parents exceeded that of a standard visitation order.

The story of Arizona is as unique as its shared parenting adjustment. It is one of four states—the other states are California, New Jersey, and Missouri—that allow an

adjustment for inordinately small amounts of time sharing with the nonresident parent (for example, one overnight per year). In contrast, most states with a shared parenting time adjustment do not apply the adjustment until the nonresident parent's time with the child exceeds the state-determined threshold, which ranges from 25 to 50 percent of the child's time. The original Arizona adjustment resulted in some "cliff effects" in the order amounts when increasing the child's time with the nonresident parent (for example, there was a significant cliff effect when moving from 18 to 25 percent of the child's time being spent with the nonresident parent). While attempting to alleviate the cliff effects, the entire Arizona adjustment became open to debate. The revision now presumes that when there are over 142 overnights per year (39 percent), the noncustodial parent bears most of the costs of the child, rather than the custodial parent. If the child spends less than 142 overnights per year with the noncustodial parent, the custodial parent bears most of the costs of the child. The revisions will not be effective until 2001.

Literature on Shared Parenting Adjustments

Several recent articles demonstrate the importance of shared parenting time adjustments in child support obligations. For example, one paper by a law professor argues that since children who know their fathers have better emotional and social outcomes (with higher education achievements and fewer crimes committed) than children with absent parents, child support obligations should be designed to encourage the father's presence in the child's life.³¹ The paper also praises the California child support guideline for providing such an adjustment.

A recent paper that examines case file data from Arizona, another state that has a shared parenting adjustment, found that 91 percent of child support due was paid in cases where both a shared parenting time adjustment was applied and the obligor attended mandatory parenting education class.³² The comparable percent paid was 57 percent in cases where the obligor attended parenting education but did not receive the shared parenting time adjustment.

Child-Rearing Costs

States are required to review recent economic studies on child-rearing costs as part of their quadrennial review (45 CFR 302.56). Most states consider the USDA and Betson estimates of child-rearing costs along with federal poverty levels. (These estimates are discussed more thoroughly in Chapter Five of this report as well as in the

³¹ Geoffrey P. Miller, *Being There: The Importance of the Present Father in the Design of Child Support Obligations*, New York University Law School, Public Law Research Paper No. 22 (July 2000).

³² Jane C. Venohr, *Arizona Child Support Guidelines: Findings From a Case File Review*, Paper to the Supreme Court, State of Arizona, Administrative Office of the Courts, Phoenix, Arizona (October 1999).

previous guideline review report.) Most states that have updated their schedules use the Betson estimates. Montana and Washington have recently received federal Office of Child Support Enforcement (OCSE) grants to improve the economic estimates used in their guidelines. Montana, which has a Melson formula, will focus on developing a Montana-specific estimate of the child's primary support.